IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORIGINAL SIDE

WRIT PETITION NO. 2530 OF 2004

M/s.Ramani Exports, Mumbai — Petitioner

vs.

Commissioner of Income-tax,XVI, Mumbai. — Respondents

Mrs.A. Vissanjee with Mr.S.J. Mehta for the petitioner.

Mr.R.V.Desai, senior counsel with Mr.R.Asokan for the respondents.

CORAM : R. M. LODHA & J.P. DEVADHAR,JJ.

DATED : 20th September 2004

P.C.

Rule.

2. Returnable forthwith.

3. The advocate on record for the revenue waives service.

4. By consent, rule is treated on board for hearing.

5. Having considered the impugned order dated 15th March 2004, we find that the Commissioner of Income-tax, Bombay-XVI failed to take into consideration the relevant aspect that the petitioner did receive the sale proceeds from some parties after some time over which the petitioner had no control. By overlooking this vital aspect the impugned order is vitiated.

6. We, accordingly, quash and set aside the order dated 15th March 2004 passed by the Commissioner of Income Tax, Mumbai-XVI and direct him to pass appropriate order afresh in consonance with the provision of Section 80HHC(2)(a) after giving an opportunity of being heard to the petitioner.

7. No costs.

(R.M. LODHA, J.)

(J.P. DEVADHAR,J.)